



The Florida Senate

Interim Project Summary 2000-37

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Committee on Ethics and Elections

Senator Burt L. Saunders, Chairman

FLORIDA ELECTION CASE LAW UPDATE

SUMMARY

Florida's election code is one of the most comprehensive in the nation. From campaign finance regulation to voter registration, from the conduct of elections to the disclaimers on political advertising, from political parties to contribution limits --- Florida law has something to say. Sometimes, however, a court will determine that the statutes go too far and violate some constitutional guarantee, typically first amendment free speech or associational rights.

This report identifies several recent court cases which have invalidated a Florida election statute on constitutional grounds or significantly narrowed the scope of its application. The statutes affected address the following issues: *advance notice of independent expenditures and endorsements*; *issue advocacy*; *candidate contributions to charitable organizations*; *anonymous political advertising*; *candidate access to the presidential preference primary ballot*; and, *political party endorsements of primary and judicial candidates*.

BACKGROUND

In the past few years, state and federal courts in Florida have stricken or modified a number of state election statutes on free speech and other constitutional grounds. Case decisions in other jurisdictions have called into question the validity of others. Therefore, the Florida Statutes do not always reflect the current state of the law on a particular election subject.

METHODOLOGY

Staff conducted legal research to identify case decisions which adversely impact existing Florida statutes. Staff also solicited input from the Division of Elections and Florida Elections Commission staffs to supplement the legal research process.

FINDINGS

MAJOR CASES	HOLDING	FLORIDA LAW
<u>UNCONSTITUTIONAL OR ADOPTING NARROWING CONSTRUCTION</u>		

Florida Right to Life, Inc. v. Crotty, No. 98-770-CIV-ORL-19A (M.D. Fla. 1998)

Issues: Campaign Finance; Issue Advocacy; Independent Expenditures; Contributions to Charitable Organizations

Florida Statutes Affected: 106.011, 106.08, 106.085, 106.144, F.S.

Impact:

- *Independent Expenditures*: held Florida's "unfair surprise" provision requiring notice of independent expenditures was an unconstitutional *prior restraint* on speech.
- *Candidate Endorsements*: held requirement that organizations endorsing candidates file a detailed statement concerning the organization and the method for selecting the candidate *prior to* publication of the endorsement was an unconstitutional *prior restraint* on speech.
- *Issue Advocacy*: narrowed the term "political committee" to include only those organizations whose "major purpose" is to engage in "express advocacy," effectively excluding issue advocacy groups (except those groups expressly advocating the passage or defeat of a ballot issue) from registration and reporting requirements.
- *Candidate Contributions to Charities*: limited the reach of the Florida statute prohibiting candidate contributions to charitable and other philanthropic organizations to only those contributions made by a candidate *in exchange for political support* of the organization.

Doe v. Mortham, 708 So.2d 929 (Fla. 1998)

Issues: Anonymous Political Advertising; Sponsorship Identification Disclaimers

Florida Statutes Affected: 106.071, 106.143, 106.144, F.S.

Impact:

Affirmed the constitutionality of Florida's political advertising disclaimer laws, while carving out a narrow exemption for *individuals* acting *independently* using only *their own modest resources*.

OTHER CASES INTERPRETING FLORIDA LAW ADVERSELY

Duke v. Smith, 13 F.3d 388 (11th Cir. 1994)

Issue: Presidential Preference Primary Candidates; Ballot Access

Florida Statutes Affected: 103.101, F.S.

Impact:

Invalidated Florida's process for reconsidering the placement of the names of presidential candidates on the presidential preference primary ballot, citing the complete absence of standards which "permits and encourages an arbitrary and discriminatory enforcement of the law."

Vicory v. Democratic State Exec. Comm., No. 90-3595 (2nd Cir., Jan 16, 1991)

Issue: Political Party Endorsements of Primary Candidates

Florida Statutes Affected: 103.121, F.S.

Impact:

Held that Florida's prohibition against primary endorsements by political parties violates the right of association guaranteed by the first amendment.

Concerned Democrats of Florida v. Reno, 458 F.Supp. 60 (S.D. Fla. 1978)

Seminole Co. Repub. Exec. Comm. v. Butterworth, No. 98-350-CA-16-K (18th Cir., 1/21/99), *appeal pending*, No. 99-446 (Fla 5th DCA 1999)

Hillsborough Co. Repub. Exec. Comm. v. Butterworth, No. 98-2855 (13th Cir., 6/29/98)

Martin Co. Repub. Exec. Comm. v. Butterworth, No. 98-441-CA (19th Cir., 6/23/98)

Pinellas Co. Repub. Exec. Comm. v. Butterworth, No. 98-1570-CI-07 (6th Cir. 6/9/98)

Issue: Political Party Endorsements of Judicial Candidates

Florida Statutes Affected: 105.09, F.S.

Impact:

Conflict exists in Florida's circuit courts concerning the constitutionality of the statute prohibiting political parties from endorsing judicial candidates.

Case Status:

Seminole Co. Repub. Exec. Comm. v. Butterworth is currently on appeal to Florida's Fifth District Court of Appeal.

Recommendations for Legislation:

No recommended legislative action at this time; continue to monitor appeal.

MAJOR CASES FROM OTHER JURISDICTIONS WITH POTENTIAL TO IMPACT FLORIDA LAW

Federal Elec. Comm'n v. Colorado Republican Federal Campaign Comm., 41 F.Supp.2d 1197 (D.Colo. 1999)

Issue: Campaign Finance; Coordinated Expenditures by Political Parties

Florida Statutes Potentially Affected: 106.08(2), F.S.

Case Summary:

Any limit on coordinated expenditures on behalf of candidates by a political party violates the first amendment.

Potential Impact:

Could render unconstitutional or wholly undermine Florida's \$50,000 aggregate limit on contributions from political parties to candidates.

Case Status:

On appeal to the U.S. Court of Appeals for the 10th Circuit.

Recommendations for Legislation:

No changes recommended at this time; continue to monitor developments.

Buckley v. ACLF, 119 S.Ct. 636 (1999)

Issue: Initiatives; Paid Petition Circulators

Florida Statutes Potentially Affected: 100.371, F.S.

Case Summary:

Invalidated Colorado's requirement that initiative petition circulators wear identification badges displaying their names.

Potential Impact:

Endangers Florida's requirement that petition forms distributed by paid petition circulators include the name and address of the circulators on each form.

RECOMMENDATIONS

Based on the foregoing cases and analysis, staff recommends consideration of the following changes to specific subsections of Florida Statutes:

Based on Crotty

P Repeal s. 106.085, F.S., relating to advance notice of independent expenditures.

P Repeal s. 106.144, F.S., relating to advance notice of endorsements.

P **106.011 Definitions.--** As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) “Political committee” means a combination of two or more individuals, or a person other than an individual, which contributes more than \$500 in the aggregate during a calendar year to any candidate or political party the primary or incidental purpose of which is to support or oppose any candidate, issue, or political party, or which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of \$500; “political committee” also means a combination of two or more individuals, or a person other than an individual, which expressly advocates the election or defeat of a candidate or issue and makes expenditures of more than \$500 in the aggregate during a calendar year; political committee also means the sponsor of a proposed constitutional amendment by initiative which intends to seek the signatures of registered electors. Organizations which are certified by the Department of State as committees of continuous existence pursuant to s. 106.04, national political parties, and the state and county executive committees of political parties regulated by chapter 103 shall not be considered political committees for purposes of this chapter. Corporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates are not political committees if their political activities are limited to contributions to candidates, political parties, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities.

P If the Legislature wants to adopt a more aggressive stance toward regulating issue advocacy:

106.011 Definitions.-- As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(18) “Expressly advocates” means to sponsor or fund, in whole or in part, a paid expression in any communications media prescribed in subsection (13), whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display, or by any means other than the spoken word in direct conversation, which, when read as a whole and with limited reference to external events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a clearly-identified candidate or issue, because it:

(a) contains a message which is unmistakable, unambiguous, and suggestive of only one plausible meaning;

(b) presents a clear plea for action; and

(c) makes clear what action is advocated.

The absence of express words of advocacy creates a rebuttable presumption that the paid expression does not expressly advocate for or against a clearly-identified candidate or issue.

P **106.08 Contributions; limitations on.--**

(5) A person may not make any contribution through or in the name of another, directly or indirectly, in any election. ~~Candidates, Political political~~ committees, and political parties may not solicit contributions from or make contributions to any religious, charitable, civic, or other causes or organizations established primarily for the public good. Candidates may not solicit contributions from or, in exchange for political support, make contributions to any religious, charitable, civic, or other causes or organizations established primarily for the public good. However, it is not a violation of this subsection for a candidate, political committee, or political party executive committee to make gifts of money in lieu of flowers in memory of a deceased person or for a candidate to continue membership in, or make regular donations from personal or business funds to, religious, political party, civic, or charitable groups of which the candidate is a member or to which the candidate has been a regular donor for more than 6 months. A candidate may purchase, with campaign funds, tickets, admission to events, or advertisements from religious, civic, political party, or charitable groups.

Based on Doe

P 106.071 Independent expenditures; reports; disclaimers.--

(1) Each person who makes an independent expenditure which expressly advocates the election or defeat of a candidate or issue with respect to any candidate or issue, and which expenditure, in the aggregate, is in the amount of \$100 or more, shall file periodic reports of such expenditures in the same manner, at the same time, and with the same officer as a political committee supporting or opposing such candidate or issue. The report shall contain the full name and address of each person to whom and for whom such expenditure has been made; the amount, date, and purpose of such expenditure; a description of the services or goods obtained by each such expenditure; and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made. Any political advertisement paid for by an independent expenditure, other than an independent expenditure by an individual which, in the aggregate, is in the amount of \$500 or less, shall prominently state "Paid political advertisement paid for by (Name of person or committee paying for advertisement) independently of any (candidate or committee)," and shall contain the name and address of the person paying for the political advertisement.

P 106.143 Political advertisements circulated prior to election; requirements.--

(1) Any political advertisement and any campaign literature, published, displayed, or circulated prior to, or on the day of, any election shall:

(a) Be marked "paid political advertisement" or with the abbreviation "pd. pol. adv."

(b) Identify the persons or organizations sponsoring the advertisement.

(c) 1.a. State whether the advertisement and the cost of production is paid for or provided in kind by or at the expense of the entity publishing, displaying, broadcasting, or circulating the political advertisement; or

b. State who provided or paid for the advertisement and cost of production, if different from the source of sponsorship.

2. This paragraph shall not apply if the source of the sponsorship is patently clear from the content or format of the political advertisement or campaign literature.

This subsection does not apply to campaign messages used by a candidate and the candidate's supporters if

those messages are designed to be worn by a person; this subsection also does not apply to political advertisements and campaign literature which, in the aggregate, are in the amount of \$500 or less, and which are sponsored and paid for by an individual acting independent of any candidate, political committee, committee of continuous existence, political party, corporation, partnership, or other combination of individuals having collective capacity.

Based on Duke

P Repeal s. 103.101(2)(b) and (c), F.S., relating to the reconsideration of placing a candidate's name on the presidential preference primary ballot.

OR,

P 103.101 Presidential preference primary.--

(2)

(c) If a presidential candidate who is generally advocated or recognized in the news media throughout the United States or in the state makes a request that the selection committee reconsider placing the candidate's name on the ballot, the selection committee will reconvene no later than the second Thursday after the first Monday in January to consider the request reconsider placing the candidate's name on the ballot. If a majority of the selection committee members of the same political party as the candidate requests that such candidate's name be placed on the ballot, the committee shall direct the department of state to place the candidate's name on the ballot. The department of state shall immediately notify such candidate of the selection committee's decision.

Based on Vicory

P Repeal s. 103.121(5), F.S., relating to prohibitions on political party endorsements of primary candidates.

Based on Buckley v. ACLF

P 100.371 Initiatives; procedure for placement on ballot.--

(2)

(c) Prior to submitting petition forms to the sponsor of a proposed initiative amendment, each ~~Each~~ paid petition circulator must place his or her name and address on each petition form for which he or she has

~~gathered~~ is gathering signatures on behalf of the sponsor of the proposed initiative amendment. The sponsor of a proposed initiative amendment is responsible for ensuring that the name and address of the paid petition

circulator appear on the petition form prior to its submission to the supervisor for verification.

COMMITTEE(S) INVOLVED IN REPORT (*Contact first committee for more information.*)

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MEMBER OVERSIGHT

Senators Carlton and Rossin